State of Connecticut

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Honorable Ben S. Bernanke
Chairman Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W
Washington, D.C., 20551

Honorable Jennifer J. Johnson
Secretary Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C., 20551

RE: Proposed Rules to Implement the Credit Card Accountability Responsibility and Disclosure Act of 2009

Dear Chairman Bernanke and Secretary Johnson:

The proposed rules recently issued by the Board to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) are woefully inadequate to protect consumers from the worst abuses of the credit card industry. Once again, the Federal Reserve Board has chosen to protect the interests of Wall Street bankers at the expense of Main Street consumers – putting concerns for bank "safety and soundness" ahead of consumer protection. The Board's apparent favoritism of banks mocks the clear Congressional intent evidenced in the CARD Act to protect consumers from the abuses of credit card issuers and underscores the need for a strong, independent Consumer Financial Protection Agency that puts consumers first.

The Board's aversion to consumer protection is most clearly evidenced by its failure to fight interest rate increases that credit card issuers unfairly and arbitrarily imposed on consumers – even some of their best customers who fully honored their credit card agreements – before the CARD Act's effective date. Indeed, the proposed regulations do not actually require interest rate reductions regardless of how unjustified the increase. Even when the statutorily mandated review shows a clear decline in credit risk and capital cost to the issuer, the Board's proposed rules fail to explicitly require

that a credit card issuer reduce the consumer's interest rate. The Board's failure to require interest rate reductions in these circumstances violates the CARD Act's fundamental purpose of protecting consumers from bank practices that take advantage of and gouge consumers. Finally, under the Board's proposed rules, consumers are at the mercy of banks who will fully exploit the Board's failure to place any limits on the egregious penalty interest charges banks callously impose on consumers for minor infractions. I address each of these issues in more detail below.

A. Interest Rate Reviews (new TILA Section 148)

I reiterate the concerns expressed in my three previous letters and again urge the Board to issue rules to implement new Truth In Lending Act (TILA) section 148 in a manner that will protect consumers from the unconscionable avarice of some card issuers who imposed outrageous interest rate increases on consumers ahead of the effective date of core CARD Act protections.

When it debated the CARD Act, Congress repeatedly raised concerns that card issuers were rushing to arbitrarily raise interest rates on existing balances in advance of the new consumer protections.[1] Although Congress allowed banks to continue using risk-based pricing to enable banks to "account for the particular risk of an individual borrower," Congress believed that "[c]onsumers who prudently manage their use of credit deserve to be rewarded with lower prices and better terms. . . [and] should not be forced to subsidize the bad habits of others."[2] Congress clearly wanted banks to "consider both positive and negative changes in the consumer's risk profile when setting rates and terms . . . [so that] consumers will pay more when their credit risk goes up and [will] have their rates reduced when it comes down."[3] As a result of these concerns, Congress required reasonable reviews of all interest rate increases imposed since January 1, 2009. In light of this clear Congressional intent, the Board's final rules must explicitly require banks to roll back interest rate increases when justified by the consumer's risk profile. Reviews that do not result in interest rate reductions when consumers' credit profiles improve and bank costs decline cannot be considered "reasonable" under any normal meaning of the word.

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1 *See e.g.* 111 Cong. Rec. H5024 (daily ed. Apr. 30, 2009) (statements of Rep. Frank, Rep. Watt, and Rep. Lee).

2 111 Cong. Rec. S5350 (daily ed. May 12, 2009) (statement of Sen. Shelby).

3 *Id.*

Not only do the Board's proposed rules fail to require such roll backs, they are so weak and ambiguous that they fail to give any guidance regarding the "reasonable methodologies"[4] that should be used to assess the rate review factors set forth in the CARD Act – including the credit risk of the borrower. The Board's complete lack of regulatory guidance leaves banks free to perform perfunctory reviews, manipulate amorphous factors to justify rate increases, switch to different factors during the review from those used to increase rates, and otherwise deny appropriate rate reductions – even where such reviews show a clear decline in consumer credit risk. Under the Board's proposed rules, banks are literally free to look at any factors they choose and to write their own "policies and procedures" for doing the required reviews without any guidance from the Board to ensure that the methodologies used are reasonable.

I continue to urge the Board to adopt rules that ***require*** banks to roll back interest rate increases on existing balances imposed between January 1, 2009 and February 22, 2010 where the mandated review indicates that the cardholder engaged in no adverse conduct and poses no increased credit risk. Such reductions would be fully consistent with Congress' intent in the CARD Act to prohibit arbitrary and retroactive rate increases. In addition, the Board's final rules should mandate reductions of penalty interest rate charges imposed due to late payments where the cardholder has subsequently made six consecutive on-time payments. Such reductions would be consistent with those now mandated by the CARD Act for penalty interest rates. In summary, the Board's final rules must demonstrate clearly that only those review methodologies resulting in rollbacks can be considered reasonable.

Finally, consistent with Congressional intent, the Board must require such reviews to commence on August 22, 2010 for interest rate increases imposed between January 1, 2009 and February 22, 2010. The Board should also require banks to submit their review policies and procedures and issue semi-annual reports on the total number of accounts reviewed, the total number of accounts that received an interest rate reduction, and the starting and ending rates of the accounts reviewed. Without such information, there is no way to ensure that the review methodologies used by the banks are reasonable.

In light of the most recent financial collapse, the consequences of abdicating regulatory authority to the financial industry should be painfully apparent. Accordingly, I urge the Board to adopt final rules that require banks to perform reasonable reviews and protect consumers from arbitrary, retrospective, and unfair interest rate increases on existing balances that were imposed or maintained in a manner now clearly prohibited by the CARD Act.

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[4] New TILA § 148(b)(1).

B. Reasonable and Proportional Standard for Penalty Fees and Charges (new TILA Section 149)

I call on the Board to reconsider its flawed determination that the CARD Act's important limitations on penalty fees and charges should not apply to penalty interest charges. Specifically, the new TILA section 149 broadly provides that "[t]he amount of any penalty fee or charge . . . including any late payment fee, over-the-limit fee, or ***any other penalty fee or charge***, shall be reasonable and proportional" to the violation of the cardholder agreement to which the fee or charge is connected. Despite this broad and clear language, the Board's proposed comment 52(b) 1 purports to exclude ***penalty interest charges*** that banks routinely impose on cardholders for such violations from the "reasonable and proportional" standard.

The Board's determination is inconsistent with clear Congressional intent and abandons consumers with a dubious statutory interpretation creating a giant loophole banks will surely exploit. The Board's final rules should rectify this error and state that the reasonable and proportional standard applies to all penalty fees or charges, including penalty interest charges.

The Board should also establish low "safe harbor" limits for penalty fees and charges to ensure that they are reasonable and proportional. In setting these "safe harbor" limits, the Board should look to the far lower amounts that community banks and credit unions currently impose – compared to those of large banks – as strong indicators of the maximum amounts necessary to deter cardholder misconduct and recover bank costs incurred as a result of such misconduct. If such lower fees and charges do not threaten the safety and soundness of smaller institutions, they will not harm the far wealthier and diversified large banks.

I applaud the Board's decision to prohibit (a) penalty fees based on violations of account terms that exceed the dollar amount associated with the violation, (b) penalty fees based on account inactivity or termination of an account, and (c) multiple penalty fees based on a single event or transaction. Just as the Board recognizes that such penalties fail to satisfy the reasonable and proportional standard set forth by Congress, it should recognize the Congressional intent behind the standard when it establishes the "safe harbor" limits. Congress acted to protect consumers from egregious penalties that far exceed the amounts necessary to deter violations and cover costs incurred. Congress understood that banks have callously treated penalty fees as simply another revenue source and clearly intended to put an end to that unfair practice. The "safe harbor" limits to be established by the Board should reflect this Congressional decision.

Please keep these considerations in mind as you draft the final rules to implement new TILA sections 148 and 149. If you have any questions regarding these important issues, please do not hesitate to contact me or Assistant Attorneys General Mathew Budzik and Joseph J. Chambers of my Finance Department at (860) 808-5270.

Very truly yours,

RICHARD BLUMENTHAL